Water Pollution Control Advisory Council (WPCAC) Meeting
August 22, 2002 9:30 a.m.-12:20 p.m.
Room 111 Metcalf Building

Attendees:

Council Members:
Richard Parks, Fishing Outfitters Association of MT
Mike McLane, Dept. Of Natural Resources and Conservation (DNRC)
Doug Parker, Hydrometrics
Robert Willems, Soil & Water Conservation District
Barb Butler, Billings Solid Waste Division
Roger Noble, Land & Water Consultants
John Wilson, Montana Trout Unlimited

Other Attendees:
Bob Bukantis, Department of Environmental Quality (DEQ)
Chris Levine, DEQ
Tom Reid, DEQ
Bonnie Lovelace, DEQ
Brian Heckenberger, DEQ
Abe Horpestad, DEQ
Steve Welch, DEQ
Don Allen, WETA

Approval of Minutes

Chairman Richard Parks called the WPCAC meeting to order at 9:30 a.m. An update on the arsenic standards was added to the agenda. Doug Parker requested a correction to the minutes to reflect his change of employment from ASARCO to Hydrometrics. The council approved the minutes from the May 9, 2002 meeting with corrections.

Strom Water Program Rules

Tom Reid said that in 1972 the current storm water permit program was formulated under the Federal Water Pollution Control Act (Clean Water Act). In 1974, Montana was delegated the NPDES program under the Federal Clean Water Act. Montana is delegated for the base program, base NPDES, general NPDES, and federal facilities. In 1987, congress amended the Clean Water Act to address storm water in two phases. Congress passed Phase I in 1989-1990 giving EPA two years to promulgate rules and three years to initiate permitting. Phase I addressed industrial facilities, including under federal rule, construction activities greater than five acres and medium to large municipal separate storm sewer systems (MS4) which serve a population greater than 100,000. Montana does not currently have any MS4 permits. In 1999 Phase II was promulgated into the federal rules. DEQ is incorporating Phase II regulations into state regulations. Phase II extends MS4 coverage down to small MS4's (cities greater than 10,000) and construction activates that exceed one acre. DEQ made the decision to spell these regulations out instead of incorporating the federal regulations by reference. DEQs implementation of Phase II differs from the federal implementation because DEQ is fee based and Phase I was implemented differently.

Subchapter 13 is basic the NPDES permit rule which lays out the base program, covers individual NPDES permits and describes what NPDES permits are. Changes to the rule included housekeeping, deleting definitions to Group I and Group II storm water discharges and change the definition of storm water point sources to be consistent with

the new federal regulations. A notice of intent for construction activity was also incorporated into this rule. This would allow any contractor doing construction that would fall under the general permit to submit an application and a storm water pollution prevention plan (SWPPP) and start construction without waiting for a response from DEQ. Upon receipt by the Department, contractors would be covered under the general permit if they have met all the conditions. DEQ would then review or do a field inspection of the SWPPP to determine if it is adequate and request them to modify it as needed. If a major storm water event occurs and the BMPs were inadequate and a significant level of pollution discharge occurred, DEQ would notify the permit holder and work with them through compliance assistance in order to gain compliance with the rule. Once the new regulations are adopted this would apply to all construction projects greater than one acre. Other changes deal with monitoring reporting requirements and MS4 permits.

John Wilson asked if, under the mining, oil and gas section, if self-monitoring, semi-annual sampling methods result in proper information needed to determine if the storm water is in compliance? What authority does DEQ have in this process?

Tom Reid said that this is storm water discharge and DEQs regulations are different than the federal effluent limit guidelines. Mining, oil, gas and coal activities are issued individual NPDES permits, which require monthly monitoring that does capture the required information to determine compliance. Mining, oil, gas and coal activities are required to sample for a variety of indicator parameters under the general permit and evaluate the data to determine what can be done to reduce the contaminants in the water. The thrust of general permits is storm water management plans, which include best management practices (BMPs) to identify and deal with the sources. During inspections, DEQ looks to see if the SWPPP has been implemented by doing the BMPs prior to a storm water event. With storm water runoff, DEQ looks to see if they are installed according to the SWPPP and if they are properly maintained. If the permit holder does not comply with the requirements, it is a violation of the permit and is subject to the same penalties that any other permit violation receives. Any problems with the BMPs that DEQ discovers through reviewing the SWPPP or on-site inspections must be corrected by the permit holder. If monitoring results indicate a problem, during the permit holders' annual evaluation the permit holder would reassess the BMPs and take any corrective measures necessary.

Subchapter 11 consists of ten new rules. Rule I is an introduction. New Rule II discusses permit requirements and identifies the six different categories of regulated activities that will fall under this permit. A new category is for discharges that the Department determines storm water controls are needed based on pollutions control needs identified in a Total Maximum Daily Load (TMDL).

Doug Parker said that the TMDL permit would most likely be controversial. What is DEQs criteria or thinking on "the Department determines" and how that is going to be implemented? DEQ will need to provide specific guidance, criteria or examples.

Tom Reid said that the permit would be a function of the TMDL process. There are no set criteria and this may never be implemented.

Richard Parks said that as an example a town that is under the MS4 permit limits has a TMDL done in the watershed. The TMDL determines a permit is needed for this town. Is it correct to say that the town could be regulated under the MS4 permit? The place to address concerns about being regulated under the MS4 permit in this case would be during the TMDL process.

Tom Reid said that is correct. There are other designation criteria for MS4 that may determine controls are necessary for a town.

Doug Parker said that the concern would be that the standards are not being exceeded but the TMDL process picks and chooses among the sources within a drainage and determines who needs to get a permit.

Bonnie Lovelace said that the allocation process of the TMDL is where the designation will occur. Once it was approved the permitting process will begin.

Tom Reid said that section five of Rule II establishes a waiver process for small construction activities only. If the construction project can be proven to occur at a time when there is a low potential of impact, a waiver can be done.

John Wilson asked in regards to a case where the surface water does meet standards but a TMDL triggers a determination that a permit is required, how does this work with the non-degradation policy?

Tom Reid said that if a permit holder is in compliance with the SWPPP it is considered to be in compliance with non-degradation policies. TMDLs are based on standards. If a TMDL were established, it would not affect those facilities that fall under the regulation. The TMDL process would determine whether storm water protection was necessary and what permits would be required.

New Rule III is definitions used for this rule. There is a definition that identifies all the facilities that are designated MS4 facilities. DEQ has discussed this list with the municipalities on the list and has not seen a great deal of concern with this rule. All entities within a municipality will also need to be covered under a MS4 permit. New Rule IV sets up exclusions from having a permit. New Rule V establishes designation criteria for additional unregulated MS4s and deregulation criteria.

Roger Noble asked if in the exclusions there is a move to include discharges to groundwater?

Tom Reid said that there are groundwater rules that address pollutant discharges to groundwater. If it is hydrologically connected, it would be considered surface water and subject to permitting under this rule.

John Wilson asked if it was possible that a mining operation has storm water discharges where some are not permitted and some are permitted?

Tom Reid said that EPA developed a table for guidance that classified all wastewater at mining facilities under four categories. Unclassified water is run on water that is diverted around the facility and does not require a permit.

New Rule VI is general application information pertaining to general permits subject to this subchapter. New Rule VII is application information for MS4 and establishes the minimum control measures that are the emphasis of the MS4 program.

John Wilson asked if under New Rule VIII, notice of intent, a SWPP was submitted and DEQ did not do a field inspection of the site, would the permit holder be liable if a storm water event occurred and pollution was discharged into the water due to inappropriate BMPs for the site?

Tom Reid said that the only liability would be if the permit holder did not take steps to correct the situation. If there was damage done to a resource, it is a different circumstance. If the damage was significant enough, compliance assistance may be skipped and an enforcement action that would require them to remediate the situation.

New Rule IX is the no exposure certification. This is an opportunity for a facility that falls under the industrial category to assess their facility and submit a statement indicating that there is a low or no potential for storm water to come into contact with pollutants. New Rule X addresses transfers of permits. In order for DEQ to maintain and operate a fee system it is important to know who is responsible for the site. DEQ will charge half the application fee to transfer the permit and a new notice of intent needs to be submitted.

Barb Butler said that she is in disagreement with the Department concerning the monitoring requirements in subchapter 13. The regulated entities involved will be addressing the Board directly with their concerns. Rule II is written to say that the department may require monitoring. This is giving a penalty without informing the permit holder what the infraction is. What would the regulated community do to require DEQ to initiate and require monitoring? If the regulative community knows what the infraction was they could then avoid it and not be required to do monitoring. If DEQ plans to require monitoring, isn't this more stringent than the federal guidelines?

Tom Reid said that assumption is that monitoring would be required for all of the MS4 permits. If a condition is put on a permit, Department rules require monitoring to be done to enforce that condition. In the wording of the rule using the term "the Department may" gives the Department the discretion to require monitoring in a permit process. In each permit DEQ will indicate the level and type of monitoring which could include other things than collecting a water sample and testing it for pollutants.

Bonnie Lovelace said that EPA is adamant that monitoring must be a part of the municipal process. Monitoring may include inspections, chemical sampling, sampling for a list of pollutants, etc.

Barb Butler said she is specifically referring to storm water sampling and analysis. DEQ has repeatedly said that they will not know if things are working without numbers to verify it. Phase I Storm Water Program has proven that allocating funds towards sampling and analysis was a waste of money because the data is not reproducible. This is a narrative standard regulation, which includes BMPs and education, that a stack of numbers may or may not make much since.

Brian Heckenberger said the monitoring is to determine where the problem areas are and the effectiveness of the BMPs. There are two types of monitoring that may be used: compliance monitoring which deals with effluent levels and benchmark monitoring which evaluates the effectiveness of BMPs.

<u>County Minimum Standards for Onsite Wastewater Treatment and Update of DEQ-4, Design Manual For Subsurface Wastewater Treatment Systems</u>

Theresa Blazicevich said that a task force has been rewriting regulations in subdivisions for more than four years. The task force consisted of various regulated entities and county health departments. DEQ also mailed these proposed regulations out to all the consultants that work on and design wastewater systems and all county health departments. DEQ has intergraded the comments into the proposed regulations. These regulations mainly concern wastewater or sewage treatment. The Subdivision regulations also address water supplies, storm water and solid waste disposal. Wastewater or sewage control, treatment or disposal is under a number of regulations. This packet of regulations is the county minimum standards and is what the county septic permits are based on. Changes to this packet require changes to other regulations to ensure they are all consistent. New design standards, DEQ-4, have been developed and was put into effect December 2000. The DEQ-4 includes new technology that has been developed during the past ten years.

When the subdivision regulations were updated it left the county minimum standards inconsistent with the new regulations. In 2000 DEQ made only the necessary changes to these regulations to adopt DEQ-4. DEQ is now going through and ensuring that it is consistent with all other regulations by changing definitions and fixing other issues. If the county issued a septic permit for a site that is not a subdivision and is greater than 20 acres and the owners later wanted to subdivide it, the inconsistencies could limit the options. Rule IV had a requirement to establish a replacement area added in the event the current wastewater treatment system fails. DEQ clarified site evaluations in the regulations to ensure everyone is using the same standards. The regulations prohibit locating drain fields in drainage ways. Rule V is five problem-solving designs for single house lots that can't install state of the art wastewater treatment system, but would not be allowed in new subdivisions. Rule V includes the adoption of DEQ-4. A new EPA guidance manual for on-site subsurface wastewater treatment came out in February and DEQ incorporated many of the differences into the state regulations as they apply to Montana. A permitting section has been added to the county minimum standards.

Bonnie Lovelace made the final pieces of the sanitation act rules and public water supply rules available for the council's information.

Recommendation to Develop a Human Health Standard for the Herbicide Bromoxynil

Chris Levine passed out a copy of the WQB-7 page with Bromoxynil and a notice of public hearing on the proposed amendment for the WQB-7.

Chris Levine said the Department of Agriculture asked DEQ to develop a human health water quality standard for the herbicide bromoxynil because it was accidentally introduced into an aquifer. DEQ contacted the EPA and received some recommendations on human health toxicity and carcinogen calculations for standards. DEQ then made modifications to WQB-7 to include the bromoxynil standards and indicate that it is a probable carcinogen. The cover page will have a 2002 date on it. This standard would guide clean up in the event of accidental introduction to water. This herbicide is used in small grain areas to kill annual weeds and has only been detected in one well but bromoxynil has not been actively monitored for in the past. The Agriculture Ground Water Act requires the Department of Agriculture to request a standard to be developed when any chemical is introduced into the ground water.

John Wilson asked if the standard that DEQ is proposing to adopt is a 1/100,000 risk level? Is there EPA guidance on this?

Chris Levine said that the increase of cancer risk would be 1/100,000 with the 3.4 µg/L. The EPA guidance is how to calculate a standard. The 1/100,000 risk level is in the Water Quality Act for carcinogens.

Roger Noble asked if this establishes a MCL?

Chris Levine said that this is not a MCL. It is only a human health standard. The MCL would consider treatment, cost effectiveness, and other issues. A MCL will probably not be established for this at this point.

Update on Arsenic Standards

John Wilson said that during the last meeting it was indicated that the new arsenic standards would not be adopted until 2006 because DEQ shall not have standards more stringent than federal government. There was some discussion of the risk factor and that it should be adopted because of the risk parameters. This was to be discussed with the Legal Division to see why it has not been interpretated in this way. It would be best for the department to address this issue as soon as possible and send a memo out to the members to inform them what the department had decided.

Abe Horpestad said that the arsenic standard concerns have not been discussed with the Legal Division. It is possible to give the council some policy interpretation. There are valid reasons for not acting and being out of sync with the federal standards.

The major reason is almost all the exposure to arsenic in Montana comes form naturally occurring sources and would not be governed by the standards. One of the non-natural sources is the discharge at Zortman Landusky, which DEQ is trying to resolve without adding millions of dollars to the cause by adopting the new standards.

Richard Parks would like this to be on the next agenda if DEQ does not send out a memo regarding this issue before the next meeting.

Update of Recent BER Action on the Proposed New Classifications of Ephemeral Streams and Ditches

Abe Horpestad said that the new classifications have been adopted and have been effective. DEQ is in the process in deciding who is going to handle the new workload because the standards that were adopted do not automatically reclassify any waterbody. In order to reclassify a waterbody a use attainability analysis (UAA) must be done and it needs to be established that the waterbody was originally misclassified. The large dischargers may be required to do UAA's and the Department may do them for the smaller dischargers. There have been some informal requests to do UAA's.

Update of Recent Happenings in the CBM/EC and SAR Standards

Abe Horpestad passed out revised copies of the three proposed rules that are out for review at the upcoming hearings.

Abe Horpestad said that the Board decided that the Department would have two public hearings. There was a petition from the irrigators requesting initiation of rule making. Alternatives number one and two are DEQs preferred alternatives and number zero is the petitioners' alternative. The public hearings have been scheduled for September 26th in Miles City and September 27th in Helena. The Board decided to see some of the countryside that is being affected. A tour is set on September 25th to visit the Fidelity facility at Decker, a place at Birney on the Tongue River with water spreading irrigation, Miles City to see the TY Dam and a field with signs of salt accumulation, and the Powder River to visit a field that is irrigated with very little poor quality water. The tour is open to the public and an agenda will be developed indicating when and where to meet. DEQ will review the comments from the hearings and get back to the Board on December 6th.

The Board was unhappy with the diverging views presented at the last Board meeting and asked DEQ to set up a collaborative workgroup, which would involve all the affected parties including Wyoming. The work group met and had a difficult time formulating a precise written description of their purpose. Wyoming declined to be involved with the collaborative workgroup because it is an internal policy decision the Montana needs to make. Once MDEQ has made a decision Wyoming will try to comply with MDEQs policy. Wyoming decided to stay with narrative standards but are adopting guidelines for numbers for EC and SAR.

The EIS work is proceeding. There was a workshop involving WBLM, MBLM, MDEQ and EPA addressing the disparity between the assumptions between the

Wyoming's EIS and Montana's EIS. Wyoming's EIS gave a number of 10 gallons per minute as a discharge from a well that would last for ten years. Montana's EIS gave a number of 2 ½ gallons per minute that would last for twenty years. Wyoming said that 80-90% of the water that was withdrawn from a well would disappear. Montana said that 20% of it would be used beneficially. The differences have been worked out and the two are now roughly the same. Montana's EIS is scheduled to have the final draft out in October and the final to be completed by December. The BLMs from both states have been notified that they are legally on shaky ground by issuing a final EIS that contains completely new information that was not in the draft. New information includes rewriting the water impact section, adding air-modeling results, adding a 3-D ground water module and adding social and economic impacts when the tribes are being incorporated.

Abe Horpestad passed out flow and EC data plots for the Powder and Tongue Rivers.

Abe Horpestad said that one problem with setting numeric standards in the Tongue and Powder River basins is the quality of the water is naturally marginal. The average quality water for the Powder River is approximately what DEQ has decided should be the standard. This would mean that 50% of the time the standards would be exceeded naturally. The standards must be developed to protect the best quality water that the irrigators use. DEQ has proposed for the Tongue River at the state line an EC standard that is not to exceed 600 µS/cm or in the petitioners' option over 1000 µS/cm. Alternative number two includes an allocation of the assimilative capacity on the Tongue River. It says that to achieve the 1000 µS/cm EC at Miles City all natural increases that occur between the state line and Miles City must be taken into account. The average concentration could be increased at the state line by 250 units and still not have the average exceed 1000 µS/cm EC. Alternative two uses a proportionate scheme to allocate the extra 250 units between various entities. There is a provision in the act that says state's standards cannot be more stringent than the federal standards unless it is necessary to protect public health and the environment. Allocating loads has very little relationship with protecting public health and the environment. The irrigators used DEQs allocation scheme for their alternative but used different irrigation time periods and included a moratorium for any discharges in the tributaries because of the lack of data. DEQ may collect this data by asking selected farmers in the area to collect water samples when the runoff starts.

Other Business

John Wilson asked if it would be possible for DEQ to bring any water quality legislative items that is going to be addressed at the next session to the next meeting. Another agenda item would be an update on the progress of the outstanding resource water designation for the Gallatin.

Richard Parks adjourned the meeting at 12:20 p.m.